

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 43 Criminal Activity

SPONSOR(S): Snyder and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 76

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Safety & Security Council	_____	Cunningham	Havlicak
2) Policy & Budget Council	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Chapter 874, F.S., the "Criminal Street Gang Prevention Act of 1996," was enacted on the basis of a legislative finding that the state is facing a mounting crisis caused by criminal street gangs whose members terrorize citizens and commit a multitude of crimes. The Act provides enhanced penalties if a court finds that a defendant committed an offense for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang, and makes intentionally causing, encouraging, soliciting, or recruiting criminal street gang membership a felony. Profits, proceeds, and instrumentalities of criminal street gangs may be forfeited under the provisions of the Act. Additionally, the Act authorizes the Department of Law Enforcement to develop and manage a statewide criminal street gang database to facilitate exchange of information.

HB 43 renames the Act the "Criminal Gang Prevention Act" and replaces the term "criminal street gang" with "criminal gang" throughout chapter 874, F.S., and other referencing statutes. The bill revises the legislative intent language of the Act and provides additional definitions. The bill also authorizes the Department of Law Enforcement to compile and retain additional information regarding criminal gangs for law enforcement purposes. Local law enforcement agencies are authorized to compile criminal gang information and to notify prosecutors of an arrested individual's suspected criminal gang membership status.

The bill makes it a 3rd degree felony for any person to use electronic communication to further any criminal purpose, to intimidate or harass other persons, or to advertise his or her presence in the community for the purpose of benefiting, promoting, or furthering the interests of a criminal gang. The bill makes it a 2nd degree felony for any person to possess or manufacture any blank, forged, stolen, fictitious, fraudulent, counterfeit, or otherwise unlawfully issued identification document for the purpose of benefiting, promoting, or furthering the interests of a criminal gang. HB 43 also requires courts to order the suspension of the driver's license of persons convicted or adjudicated delinquent of any criminal gang-related offense.

HB 43 adds criminal gang-related duties to the Florida Violent Crime and Drug Control Council (VCDCC) and creates the Drug Control Strategy and Criminal Gangs Committee within the VCDCC.

HB 43 also creates terms and conditions of community supervision that prohibits certain offenders from communicating with criminal gang members, except as authorized by certain entities for the purpose of aiding in the investigation of criminal gang activity.

The bill makes it a 3rd degree felony for certain felons and delinquents to possess a bulletproof vest, and revises provisions relating to the enjoining of public nuisances to include certain places frequented by persons involved in criminal gangs.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security – This bill authorizes the Department of Law Enforcement to compile and retain additional information regarding criminal gangs for law enforcement purposes, and authorizes local law enforcement agencies to compile criminal gang information and to notify prosecutors of an arrested individual's suspected criminal gang membership status.

Promote Personal Responsibility – This bill makes it a crime for any person to use electronic communication to intimidate or harass other persons, or to advertise his or her presence in the community for the purpose of benefiting, promoting, or furthering the interests of a criminal gang. This bill also makes it a crime for any person to possess or manufacture any blank, forged, stolen, fictitious, fraudulent, counterfeit, or otherwise unlawfully issued identification document for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

Safeguard Individual Liberty – This bill creates terms and conditions of community supervision that prohibits certain offenders from communicating with criminal gang members, except as authorized by certain entities for the purpose of aiding in the investigation of criminal gang activity.

B. EFFECT OF PROPOSED CHANGES:

Bulletproof Vests

Currently, s. 775.0846, F.S., provides that a person commits the offense of unlawfully wearing a bulletproof vest¹ when, acting alone or with one or more other persons and while possessing a firearm, he or she commits or attempts to commit certain violent crimes and, in the course of and in furtherance of such crimes, he or she wears a bulletproof vest. This offense is a 3rd degree felony.² At this time, Florida law does not prohibit any group of persons from simply *possessing* a bulletproof vest.

Federal law³ currently prohibits a person from purchasing, owning, or possessing body armor, if that person has been convicted of a felony that is a crime of violence⁴ or an offense under state law that would constitute a crime of violence. The federal law provides an affirmative defense if the person obtained prior written certification from his or her employer that the defendant's purchase, use, or possession of body armor was necessary for the safe performance of lawful business activity, and that the use and possession by the defendant were limited to the course of such performance.

Effect of the Bill

HB 43 creates s. 790.231, F.S., which prohibits the following persons from *possessing* a bulletproof vest:

- Persons convicted of a felony in the courts of Florida;
- Persons found by a Florida court to have committed a delinquent act that would be a felony if committed by an adult and such person is under 24 years of age;

¹ "Bulletproof vest" is defined by s. 775.0846, F.S., as "a bullet-resistant soft body armor providing, as a minimum standard, the level of protection known as "threat level I," which shall mean at least seven layers of bullet-resistant material providing protection from three shots of 158-grain lead ammunition fired from a .38 caliber handgun at a velocity of 850 feet per second."

² A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

³ See 18 USC 931.

⁴ "Crime of violence" is defined by 18 USC 16 as (1) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another or, (2) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

- Persons convicted of or found to have committed a crime against the United States which is designated as a felony;
- Persons found to have committed a delinquent act in another state, territory, or country that would be a felony if committed by an adult and which was punishable by imprisonment for a term exceeding one year and such person is 24 years of age;
- Persons convicted of or found to have committed an offense that is a felony in another state, territory, or country and which was punishable by imprisonment for a term exceeding one year;

The bill specifies that the bulletproof vest prohibition does not apply to persons convicted of a felony whose civil rights have been restored. Persons in violation of this section commit a 3rd degree felony.

Public Nuisances

Nuisances that tend to annoy the community, injure the health of the citizens in general, or corrupt the public morals are declared by statute to be misdemeanors of the second degree punishable as provided in s. 775.083⁵, F.S.⁶ Nuisances may also be abated and enjoined.⁷

Section 823.05, F.S., provides, in part, that a person is deemed to have “maintained a nuisance” if they “erect, establish, continue, or maintain, own or lease any building, booth, tent or place which tends to be frequented by the class of persons mentioned in s. 856.02.” Section 856.02, F.S., related to vagrants but was repealed in 1972.

Effect of the Bill

HB 43 removes the obsolete reference to s. 856.02, F.S, and replaces it with a reference to “persons who are involved in criminal gangs as described in s. 874.03, F.S.” As a result, a person will be deemed to have “maintained a nuisance” if they “erect, establish, continue, or maintain, own or lease any building, booth, tent or place which tends to be frequented by persons who are involved in criminal gangs as described in s. 874.03.”

Chapter 874, F.S. – Existing Sections of Statute

Legislative Intent

Chapter 874, F.S., establishes the “Criminal Street Gang Prevention Act of 1996” (Act). The Act was enacted based upon a legislative finding that the state is facing a mounting crisis caused by criminal street gangs, and that criminal street gang activities present a clear and present danger that the state has a compelling interest in preventing.⁸ The legislature further specified that the intent of the Act was to eradicate the terror created by criminal street gangs by providing enhanced penalties and by eliminating the patterns, profits, proceeds, instrumentalities, and property facilitating criminal street gang activity, including gang recruitment.⁹

Effect of the Bill

The bill renames the Act the “Criminal Gang Prevention Act” and replaces the term “criminal street gang” with “criminal gang” throughout chapter 874, F.S. The bill adds that the state has a compelling interest in halting the danger posed by the proliferation of criminal gangs and the graduation from more

⁵ Section 775.083, F.S., provides that second degree misdemeanors are punishable by a \$500 fine.

⁶ See s. 823.01, F.S.

⁷ Section 60.05, F.S., sets forth the procedures used to abate and enjoin nuisances.

⁸ Section 874.02, F.S.

⁹ *Id.*

primitive forms of criminal gangs to highly sophisticated criminal gangs. The bill specifies that the legislature has found that street gangs, terrorist organizations, and hate groups have evolved into increasingly sophisticated and complex organized crime groups, and adds that it is the intent of the legislature to outlaw certain conduct associated with the existence and proliferation of criminal gangs.

Definitions

Section 874.03, F.S. provides the following definitions:

- "Criminal street gang" means a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common identifying signs, colors, or symbols and have two or more members who, individually or collectively, engage in or have engaged in a pattern of criminal street gang activity.
- "Criminal street gang member" is a person who is a member of a criminal street gang and who meets two or more of the following criteria:
 - o Admits to criminal street gang membership.
 - o Is identified as a criminal street gang member by a parent or guardian.
 - o Is identified as a criminal street gang member by a documented reliable informant.
 - o Resides in or frequents a particular criminal street gang's area and adopts their style of dress, their use of hand signs, or their tattoos, and associates with known criminal street gang members.
 - o Is identified as a criminal street gang member by an informant of previously untested reliability and such identification is corroborated by independent information.
 - o Has been arrested more than once in the company of identified criminal street gang members for offenses which are consistent with usual criminal street gang activity.
 - o Is identified as a criminal street gang member by physical evidence such as photographs or other documentation.
 - o Has been stopped in the company of known criminal street gang members four or more times.
- "Pattern of criminal street gang activity" means the commission or attempted commission of, or solicitation or conspiracy to commit, two or more felony or three or more misdemeanor offenses, or one felony and two misdemeanor offenses, or the comparable number of delinquent acts or violations of law which would be felonies or misdemeanors if committed by an adult, on separate occasions within a 3-year period.
- "Criminal street gang associate" means a person who:
 - o Admits to criminal street gang association; or
 - o Meets any single defining criterion for criminal street gang membership.
- "Gang-related incident" means an incident that, upon investigation, meets any of the following conditions:
 - o The participants are identified as criminal street gang members or criminal street gang associates, acting, individually or collectively, to further any criminal purpose of the gang;
 - o A reliable informant identifies an incident as criminal street gang activity; or
 - o An informant of previously untested reliability identifies an incident as criminal street gang activity and it is corroborated by independent information.

Effect of the Bill

The bill replaces the terms "criminal street gang" with "criminal gang." Additionally, the term "criminal street gang member" is replaced with "criminal gang member."

The bill adds “street gangs,” “terrorist organizations,” and “hate groups” to the definition of “criminal gang” (i.e. the former definition of “criminal street gang”). The bill redefines the term “criminal gang member” (i.e. the former definition of “criminal street gang member”) as follows:

- “Criminal gang member” is a person who meets two or more of the following criteria:
 - o Admits to criminal gang membership.
 - o Is identified as a criminal gang member by a parent or guardian.
 - o Is identified as a criminal gang member by a documented reliable informant.
 - o Resides in or frequents a particular criminal gang’s area and adopts their style of dress, their use of hand signs, or their tattoos, and associates with known criminal gang members.
 - o Is identified as a criminal gang member by an informant of previously untested reliability and such identification is corroborated by independent information.
 - o Has been arrested more than once in the company of identified criminal gang members for offenses that are consistent with usual criminal gang activity.
 - o Is identified as a criminal gang member by physical evidence such as photographs or other documentation.
 - o Has been stopped in the company of known criminal gang members four or more times.
 - o Has authored any communication indicating responsibility for the commission of any crime by the criminal gang.

The bill removes the definition of “gang-related incident” and creates the following definitions:

- “Electronic communication” has the same meaning as provided in s. 934.02¹⁰ and includes, but is not limited to, photographs, video, telephone communications, text messages, facsimile, electronic mail messages as defined in s. 668.602¹¹, and instant message real-time communications with other individuals through the Internet or other means.
- “Hate group” means an organization whose primary purpose is to promote animosity, hostility, and malice against a person or persons or against the property of a person or persons because of race, religion, disability, sexual orientation, ethnicity, or national origin.
- “Street gang” is a formal or informal ongoing organization, entity, association, or group consisting of three or more persons with a common name or common identifying signs, colors, or symbols and two or more members who, individually or collectively, have as one of their primary activities the commission of criminal or delinquent acts and engage in or have engaged in a pattern of criminal activity.
- “Terrorist organization” means any organized group engaged in or organized for the purpose of engaging in terrorism as defined in s. 775.30. This definition shall not be construed to prevent prosecution of individuals acting alone under this chapter.

Penalty Enhancements

Section 874.04, F.S., permits a court to enhance penalties if it finds, by a preponderance of the evidence, that a defendant committed an offense for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang.

¹⁰ Section 934.02, F.S., defines “electronic communication” as any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce, but does not include any wire or oral communication; any communication made through a tone-only paging device; any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object; or electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

¹¹ Section 668.602, F.S., defines “electronic mail message” as an electronic message or computer file that is transmitted between two or more telecommunications devices; computers; computer networks, regardless of whether the network is a local, regional, or global network; or electronic devices capable of receiving electronic messages, regardless of whether the message is converted to hard copy format after receipt, viewed upon transmission, or stored for later retrieval.

Effect of the Bill

The bill replaces the term “criminal street gang” with “criminal gang” and rewrites the statute to permit enhanced penalties if it is found that the defendant committed the charged offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang. The bill requires that such finding be made beyond a reasonable doubt.

Causing, Encouraging, Soliciting, or Recruiting a Person to Join a Criminal Street Gang

Section 874.05, F.S., makes it third-degree felony to intentionally cause, encourage, solicit, or recruit a person to join a criminal street gang that requires as a condition of membership or continued membership the commission of any crime. Such offense is a second-degree felony¹² if it is a second or subsequent offense.

Effect of the Bill

The bill makes it third-degree felony to intentionally cause, encourage, solicit, or recruit a person to become a criminal gang member where a condition of membership or continued membership is the commission of any crime. Such offense is a second-degree felony if it is a second or subsequent offense.

Civil Cause of Action

Section 874.06, F.S., currently provides that persons or organizations who establish, by clear and convincing evidence, coercion, intimidation, threats, or other harm to that person or organization in violation of this chapter have a civil cause of action for treble damages, an injunction, or any other appropriate relief in law or equity. Upon prevailing, the plaintiff may recover reasonable attorney's fees and costs.

Effect of the Bill

The bill provides that upon prevailing, the plaintiff may recover attorney's fees in the trial and appellate courts and the costs of investigation and litigation that reasonably incurred. The bill specifies that prevailing plaintiffs have a right or claim that is superior to any right or claim that the state has in the same property or proceeds.

The bill further provides that in addition to any remedies provided for by ss. 60.05 and 823.05, the state has a civil cause of action against any person or organization if it proves by clear and convincing evidence that it has been injured by reason of a violation of this chapter by the person or organization. The bill specifies that the state has a civil cause of action for treble damages, injunctive relief, or any other relief in law or equity which the court deems appropriate. If the state prevails, it may also recover attorney's fees in the trial and appellate courts and the costs of investigation and litigation that are reasonably incurred. The state may not recover punitive damages. The defendant is entitled to recover reasonable attorney's fees and court costs if the court finds that the state raised a claim that was without factual or legal support.

The bill provides that a person who knowingly violates a temporary or permanent order issued under this section or s. 60.05 commits a misdemeanor of the first degree.¹³

¹² A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

¹³ A first-degree misdemeanor is punishable by up to one year imprisonment and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

Forfeiture

Section 874.08, F.S., provides that the following are subject to seizure and forfeiture under the Florida Contraband Forfeiture Act, s. 932.704, F.S.:

- All profits, proceeds, and instrumentalities of criminal street gang activity and criminal street gang recruitment;
- All property used or intended or attempted to be used to facilitate the criminal activity of any criminal street gang or of any criminal street gang member; and
- All property used or intended or attempted to be used to facilitate criminal street gang recruitment.

Effect of the Bill

The bill replaces the term “criminal street gang” with “criminal gang.”

FDLE’s Gang Database

Section 874.09, F.S., authorizes the Department of Law Enforcement (FDLE) to develop and manage a statewide criminal street gang database to facilitate exchange of information pursuant to the intent and purpose of the Act.

Effect of the Bill

The bill replaces the term “criminal street gang” with “criminal gang.”

The bill authorizes FDLE to:

- Notify all law enforcement agencies that reports of arrested criminal gang members or associates shall be entered into the database as soon as the minimum level of data specified by the department is available to the reporting agency and no waiting period for the entry of that data exists.
- Compile and retain information regarding criminal gangs and their members and associates in a manner that allows the information to be used by law enforcement and other agencies deemed appropriate for investigative purposes.
- Compile and maintain a history data repository relating to criminal gangs and their members and associates in order to develop and improve techniques used by law enforcement agencies and prosecutors in the investigation, apprehension, and prosecution of members and affiliates of criminal gangs.

The bill also authorizes *local* law enforcement agencies to:

- After carrying out any arrest of any individual whom they believe to be a member or associate of a criminal gang, create or update that individual's electronic file within the database.
- Notify prosecutors of the accused individual's suspected criminal gang membership or associate status.

Chapter 874, F.S. – New Sections of Statute

HB 43 adds the following new sections of statute to chapter 874, F.S.:

Section 874.045, F.S. – Arrest and Prosecution Under Other Provisions

HB 43 specifies that nothing in chapter 874, F.S., shall prohibit the arrest and prosecution of a criminal gang member under chapter 876¹⁴, chapter 895¹⁵, chapter 896¹⁶, s. 893.20¹⁷, or any other applicable provision of law except to the extent otherwise prohibited pursuant to a statutory or constitutional provision.

Section 874.10, F.S. – Electronic Communication

HB 43 makes it a third degree felony for any person to, for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, use electronic communication to intimidate or harass other persons, or to advertise his or her presence in the community, including, but not limited to, such activities as distributing, selling, transmitting, or posting on the Internet any audio, video, or still image of criminal activity.

Section 874.11, F.S. – Identification Documents; Unlawful Possession or Creation

HB 43 makes it a second degree felony for any person to possess or manufacture any blank, forged, stolen, fictitious, fraudulent, counterfeit, or otherwise unlawfully issued identification document for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

The bill provides that the term "identification document" includes, but is not limited to, a social security card or number, a birth certificate, a driver's license, an identification card pursuant to s. 322.051, F.S., a naturalization certificate, an alien registration number, a passport, and any access credentials for a publicly operated facility or an infrastructure facility covered under 18 U.S.C. s. 2332f.

Section 874.13, F.S. – Suspension of Driver's Licenses

HB 43 requires courts to order the suspension of the driver's license of persons convicted or adjudicated delinquent of any offense contained in ch. 874, F.S., and of persons whose penalty has been enhanced pursuant to s. 874.04, F.S. The first suspension of a driver's license under this section must be for a period of 6 months, while second or subsequent suspensions must be for 1 year. The bill also specifies that if the person whose license is being suspended is sentenced to a term of incarceration, the court must direct the Department of Highway Safety and Motor Vehicles to commence the suspension of the person's driver's license upon the person's release from incarceration.

Florida Violent Crime and Drug Control Council

In 1993, the legislature passed the Florida Violent Crime Act of 1993, which created the Florida Violent Crime Council (Council) within FDLE. The Council was created to address the violent crime occurring in Florida and to develop strategies to combat it. The 2001 Legislature amended the statute, renaming the Council as the Florida Violent Crime and Drug Control Council (VCDCC).¹⁸

The VCDCC, which serves in an advisory capacity to FDLE, is comprised of 14 law enforcement professionals who meet quarterly to review major cases and crime trends with the purpose of making funding decisions assisting multi-jurisdictional drug cases, major violent crime investigations and by providing the technical and forensic expertise to complete these investigations.¹⁹

¹⁴ Criminal Anarchy, Treason, and Other Crimes Against Public Order.

¹⁵ Offenses Concerning Racketeering and Illegal Debts.

¹⁶ Offenses Related to Financial Transactions.

¹⁷ Continuing criminal enterprise.

¹⁸ "2006 Annual Report," Violent Crime and Drug Control Council, December 2006.

¹⁹ http://www.tbnweekly.com/pinellas_county/content_articles/091107_pco-05.txt

Legislative Findings

The VCDCC was created based upon a legislative finding that there was a need to develop and implement a statewide strategy to address violent criminal activity and drug control efforts by state and local law enforcement agencies, including investigations of illicit money laundering.

Effect of the Bill

HB 43 adds to the legislative findings by declaring a need to develop and implement a statewide strategy to address *crimes committed by criminal gangs*.

Duties of the Council

The duties of the VCDCC are outlined in s. 943.031, F.S. Currently, the VCDCC *must*:

- Provide advice and make recommendations, as necessary, to the executive director of FDLE;
- Receive periodic reports from regional violent crime investigation and statewide drug control strategy implementation coordinating teams which relate to violent crime trends or the investigative needs or successes in the regions, factors, and trends relevant to the implementation of the statewide drug strategy, and the results of drug control and illicit money laundering investigative efforts funded in part by the council.
- Maintain and utilize criteria for the disbursement of funds from the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account within the Department of Law Enforcement Operating Trust Fund or other appropriations provided to the Department of Law Enforcement by the Legislature in the General Appropriations Act. The criteria shall allow for the advancement of funds as approved by the council.
- Review and approve all requests for disbursement of funds from the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account within the Department of Law Enforcement Operating Trust Fund and from other appropriations provided to the department by the Legislature in the General Appropriations Act.

Additionally, the VCDCC *may* advise the executive director on the feasibility of undertaking initiatives which include, but are not limited to, the following:

- Establishing a program which provides grants to criminal justice agencies that develop and implement effective violent crime prevention and investigative programs and which provides grants to law enforcement agencies for the purpose of drug control and illicit money laundering investigative efforts or task force efforts that are determined by the council to significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, that represent a significant illicit money laundering investigative effort, or that otherwise significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council established under s. 397.333, subject to the limitations provided in this section. The grant program may include an innovations grant program to provide startup funding for new initiatives by local and state law enforcement agencies to combat violent crime or to implement drug control or illicit money laundering investigative efforts or task force efforts by law enforcement agencies, including, but not limited to, initiatives such as:
 - o Providing enhanced community-oriented policing.
 - o Providing additional undercover officers and other investigative officers to assist with violent crime investigations in emergency situations.
 - o Providing funding for multiagency or statewide drug control or illicit money laundering investigative efforts or task force efforts that cannot be reasonably funded completely by alternative sources and that significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, that represent a significant illicit money laundering investigative effort, or that otherwise

significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council established under s. 397.333.

- Expanding the use of automated fingerprint identification systems at state and local levels.
- Identifying methods to prevent violent crime.
- Identifying methods to enhance multiagency or statewide drug control or illicit money laundering investigative efforts or task force efforts that significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, that represent a significant illicit money laundering investigative effort, or that otherwise significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council established under s. 397.333.
- Enhancing criminal justice training programs which address violent crime, drug control, or illicit money laundering investigative techniques or efforts.
- Developing and promoting crime prevention services and educational programs that serve the public, including, but not limited to:
 - o Enhanced victim and witness counseling services that also provide crisis intervention, information referral, transportation, and emergency financial assistance.
 - o A well-publicized rewards program for the apprehension and conviction of criminals who perpetrate violent crimes.
- Enhancing information sharing and assistance in the criminal justice community by expanding the use of community partnerships and community policing programs.

Effect of the Bill

HB 43 revises the VCDCC's duties by requiring the VCDCC to:

- Receive periodic reports from regional violent crime investigation and statewide drug control strategy implementation coordinating teams which relate to violent crime trends, including discussions regarding the activity of significant criminal gangs in the region.
- Maintain and use criteria for the disbursement of funds from the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account or any other account from which the council may disburse proactive investigative funds as may be established within the Department of Law Enforcement Operating Trust Fund or other appropriations provided to the Department of Law Enforcement by the Legislature in the General Appropriations Act. The criteria shall allow for the advancement of funds to reimburse agencies regarding violent crime investigations as approved by the council, and the advancement of funds to implement proactive drug control strategies or significant criminal gang investigative efforts as authorized by the Drug Control Strategy and Criminal Gang Committee or the Victim and Witness Protection Review Committee. Regarding violent crime investigation reimbursement, an expedited approval procedure shall be established for rapid disbursement of funds in violent crime emergency situations.

The bill specifies that "significant criminal gang investigative efforts" eligible for proactive funding must involve an effort against a known criminal gang that:

- Involves multiple law enforcement agencies;
- Reflects a dedicated significant investigative effort on the part of each participating agency in personnel, time devoted to the investigation, and agency resources dedicated to the effort;
- Reflects a dedicated commitment by a prosecuting authority to ensure that cases developed by the investigation will be timely and effectively prosecuted;
- Demonstrates a strategy and commitment to dismantling the criminal gang via seizures of assets, significant money laundering, and organized crime investigations and prosecutions, or similar efforts.

The bill specifies that the VCDCC may require satisfaction of additional elements, to include reporting criminal investigative and criminal intelligence information related to criminal gang activity and members in a manner required by FDLE, as a prerequisite for receiving proactive criminal gang funding.

HB 43 also revises the VCDCC's duties by providing that the VCDCC *may* advise the executive director on the feasibility of undertaking initiatives which include, but are not limited to, the following:

- Establishing a program which provides grants to criminal justice agencies that develop and implement effective violent crime prevention and investigative programs and which provides grants to law enforcement agencies for the purpose of drug control, criminal gang, and illicit money laundering investigative efforts or task force efforts that are determined by the council to significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, that represent significant criminal gang investigative efforts, that represent a significant illicit money laundering investigative effort, or that otherwise significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council established under s. 397.333, subject to the limitations provided in this section. The grant program may include an innovations grant program to provide startup funding for new initiatives by local and state law enforcement agencies to combat violent crime or to implement drug control, significant criminal gang investigative efforts, or illicit money laundering investigative efforts or task force efforts by law enforcement agencies, including, but not limited to, initiatives such as:
 - o Providing enhanced community-oriented policing.
 - o Providing additional undercover officers and other investigative officers to assist with violent crime investigations in emergency situations.
 - o Providing funding for multiagency or statewide drug control, criminal gang, or illicit money laundering investigative efforts or task force efforts that cannot be reasonably funded completely by alternative sources and that significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, that represent significant criminal gang investigative efforts, that represent a significant illicit money laundering investigative effort, or that otherwise significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council established under s. 397.333.
- Identifying methods to enhance multiagency or statewide drug control, criminal gang, or illicit money laundering investigative efforts or task force efforts that significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, that represent significant criminal gang investigative efforts, that represent a significant illicit money laundering investigative effort, or that otherwise significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council established under s. 397.333.
- Enhancing criminal justice training programs which address violent crime, efforts to control and eliminate criminal gangs, drug control, or illicit money laundering investigative techniques or efforts.

HB 43 also creates the Drug Control Strategy and Criminal Gang Committee (Committee) within the VCDCC. The committee consists of the following members:

- The Attorney General or a designate;
- The designate of the executive director of FDLE;
- The secretary of the Department of Corrections (DOC) or a designate;
- The director of the Office of Drug Control within the Executive Office of the Governor; and
- The state attorney, the two sheriffs, and the two chiefs of police, or their designates.

The Committee must review and approve all requests for disbursement of funds from the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account within the FDLE Operating Trust Fund and from other appropriations provided to FDLE by the Legislature in the General Appropriations Act.

The bill further requires entities receiving any proactive funding provided by the VCDCC through the Committee to report the results of the investigations to the VCDCC once the investigation has been completed. The Committee must require ongoing status reports on ongoing investigations using such findings in its closed sessions.

Terms and Conditions of Community Supervision

Chapter 948, F.S., entitled "Probation and Community Control," contains a variety of statutes that establish terms and conditions of probation and community control. Similarly, chapter 947, F.S., entitled "Parole Commission," establishes terms and conditions of parole, conditional release, and control release.

Effect of the Bill

HB 43 creates s. 948.033, F.S., and amends ss. 947.18, and 947.1405, F.S. to require courts, as a condition of supervision, to prohibit offenders who have been found by a court to have committed their crime for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, from knowingly associating with other criminal gang members or associates, except as authorized by law enforcement officials, prosecutorial authorities, or the court, for the purpose of aiding in the investigation of criminal gang activity.

Conforming Changes

HB 43 makes technical changes to ss. 893.138, 895.02, 321.0022, 921.0024, 921.141, 984.03, 985.03, 985.047, and 985.433, F.S., to conform language.

C. SECTION DIRECTORY:

Section 1. Creates s. 790.231, F.S., relating to felons and delinquents; possession of bulletproof vests.

Section 2. Amends s. 823.05, F.S., relating to places declared a nuisance; may be abated and enjoined.

Section 3. Amends s. 874.01, F.S., renaming the chapter.

Section 4. Amends s. 874.02, F.S., relating to legislative findings and intent.

Section 5. Amends s. 874.03, F.S., relating to definitions.

Section 6. Amends s. 874.04, F.S., relating to criminal gang activity; enhanced penalties.

Section 7. Creates s. 874.045, F.S., relating to arrest and prosecution under other provisions.

Section 8. Amends s. 874.05, F.S., relating to causing, encouraging, soliciting, or recruiting criminal gang membership.

Section 9. Amends s. 874.06, F.S., relating to civil cause of action.

Section 10. Amends s. 874.08, F.S., relating to criminal gang activity and recruitment; forfeiture.

Section 11. Amends s. 874.09, F.S., relating to crime data information.

Section 12. Creates s. 874.10, F.S., relating to electronic communication.

- Section 13.** Creates s. 874.11, F.S., relating to identification documents; unlawful possession or creation.
- Section 14.** Creates s. 874.13, F.S., relating to suspension of driver's license.
- Section 15.** Amends s. 943.031, F.S., relating to Florida Violent Crime and Drug Control Council.
- Section 16.** Creates s. 948.033, F.S., relating to condition of probation or community control; criminal gang.
- Section 17.** Amends s. 947.18, F.S., relating to conditions of parole.
- Section 18.** Amends s. 947.1405, F.S., relating to conditional release program.
- Section 19.** Amends s. 893.138, F.S., relating to local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity.
- Section 20.** Amends s. 895.02, F.S., relating to definitions.
- Section 21.** Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.
- Section 22.** Amends s. 921.0024, F.S., relating to Criminal Punishment Code; worksheet computations; scoresheets.
- Section 23.** Amends s. 921.141, F.S., relating to sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.
- Section 24.** Amends s. 984.03, F.S., relating to definitions.
- Section 25.** Amends s. 985.03, F.S., relating to definitions.
- Section 26.** Amends s. 985.047, F.S., relating to information systems.
- Section 27.** Amends s. 985.433, F.S., relating to disposition hearings in delinquency cases.
- Section 28.** Directs the Division of Statutory Revision to redesignate the title of chapter 874, F.S., as "Organized Criminal Activity Enforcement and Prevention."
- Section 29.** This bill takes effect July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill has an indeterminate fiscal impact. Specifically, the Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill. However, to the extent that the bill creates several unranked second and third degree felony offenses, this bill may have a prison bed impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

Additionally, portions of this bill appear to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because they are criminal laws.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1

This section of the bill prohibits certain groups of persons (e.g., convicted felons) from *possessing* a bulletproof vest. It should be noted that there may be instances in which a convicted felon may be required to wear a bulletproof vest as part of their job duties (e.g., military personnel, security personnel, etc...) or when cooperating with law enforcement officials (e.g., when conducting undercover operations). Unlike the similar federal law, which provides an affirmative defense in such instances, the bill does not provide any type of exception for these scenarios.

It should also be noted that the federal law only prohibits felons who have been convicted of certain *violent* offenses from possessing a bulletproof vest. The bill does not make this distinction in that it applies to *all* felons, regardless of whether the original offense was violent in nature.

Section 15

There appears to be a technical error on line 588. It appears that this portion of the bill should be (c) instead of being numbered "3."

On lines 600—603, it is unclear why "significant money laundering" is included as a means to demonstrate a strategy and commitment to dismantling criminal gangs.

D. STATEMENT OF THE SPONSOR

The bill sponsor submitted the following statement:

FSS 874 has not been revised since 1996. Since that time, criminal gangs have evolved into more lethal and destructive entities. This bill, if enacted, will expand the law from dealing only with traditional street gangs to include hate crime and terrorist organizations, and will enumerate additional RICO predicate crimes, enabling law enforcement to attack these groups with racketeering prosecutions. This legislation contains several important statewide Grand Jury recommendations and was crafted with the help of special state attorney prosecutors and law enforcement.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES